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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma	)	CC Docket No. 97-121

OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following opposition to the application of SBC Communications, Inc. *et al.* (collectively, "SBC") for authority to provide in-region, interLATA services in Oklahoma.

The Section 271 review process is central to the success of local exchange competition (and ultimately full service competition). The central quid pro quo of the 1996 Act[1] is that SBC (like other BOCs) cannot enter the long distance market unless and until it has relinquished its market power in the local exchange. Creating real local exchange competition will not be easy, for the incumbent has overwhelming market power and a powerful incentive to delay or impede the development of that competition. By contrast, the prospect of interLATA entry is SBC's *only* incentive to cooperate in taking the steps necessary to allow true competition in its local exchange and exchange access markets. For good reason, Section 271 mandates that SBC's incentive not be removed except upon

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151 et seq.

demonstration that each and every enumerated prerequisite is satisfied and sufficient to bring about local competition.

This is the FCC's only opportunity for a comprehensive review of whether SBC has implemented the Act and the Commission's orders. The question for this review must be whether the central promise of the Act has been fulfilled: are consumers actually able to choose among local service providers, and will they continue to enjoy the benefits of long distance competition that they take for granted after 13 years of vigorous competition? These questions are at the heart of the competitive checklist, actual competition, and public interest tests that SBC's application must satisfy as conditions to interLATA authorization. The Commission must insist upon demonstrable and verifiable proof on each and every one of these prerequisites before it may grant the authority SBC requests.

As shown below, SBC's application is premature. No residential subscriber is able to order local exchange service from any provider other than SBC, and actual competition in local exchange services is far from being realized. At least five defects require the Commission to deny SBC's application: (1) SBC does not satisfy Section 271(c)(1)(A)'s actual competition requirement because no provider is offering a competing service to residential subscribers; (2) SBC impermissibly relies upon the Track B approach even though it has received over a dozen bona fide interconnection requests; (3) SBC has not "fully implemented" all of the competitive checklist; (4) SBC is not providing interconnection and access at rates found to comply with the Act's cost standards; and (5) SBC cannot show that entry is in the public interest because the insignificant competitive benefit of its entry into the fully competitive interLATA market is outweighed by the substantial risk of harm created by

SBC's incomplete implementation of the Act and the absence of cost-based and competitively neutral access charges and universal service mechanisms. As a result, the Commission should deny SBC's application at this time.

I. SUMMARY

CompTel is a national industry association representing competitive providers of telecommunications services. Its approximately 200 members offer a wide variety of telecommunications services in markets which have been opened to competition. CompTel and its members are committed to the goal of expanding consumer choice in the local exchange and exchange access markets, where competitive alternatives do not exist today. CompTel was intimately involved in the legislative debates culminating in the Act and has participated extensively in implementation proceedings before the FCC and state PUCs. CompTel strongly supports this Commission's efforts to introduce open and fair competition in local exchange and exchange access services, so that consumers can enjoy the benefits of competition in *all* telecommunications markets.

In adopting the 1996 Act, Congress had one simple, yet ambitious, goal: to end the final monopoly in the telecommunications industry, the local exchange. Congress knew that it could not achieve this goal simply by declaring local markets "open" to competitors. Therefore, it did not stop with eliminating *de jure* barriers to entry, but took action to require ILECs to open their networks and share the economies they developed through a century of government-protected monopoly provision of service.[2] Due to the exorbitant cost

[2] *See, e.g.*, 47 U.S.C. § 251(c).

of constructing a duplicate local exchange network, local exchange competition must proceed, at least for the near term, through use of the incumbent's facilities, in part or in whole. Just as importantly, however, Congress recognized that for competition to flourish, entrants must have the flexibility to choose only those pieces of the ILEC network they need, and to use them as needed.

In local services, one size does not fit all. Competition will proceed through a number of different fronts simultaneously. Some CLECs will need to interconnect with the ILEC primarily for purposes of exchanging traffic between their customers.[3] Others will need to fill in their networks with local loops and/or other ILEC facilities in order to offer a ubiquitous product.[4] Many more will not have the resources to construct independent facilities at this time, and will need access to unbundled network elements in a platform configuration so that they can construct a network by combining facilities into a fully functional network.[5] Finally, pure service resale may provide an initial strategy for many new entrants.[6] Each option must be fully available, or Congress' goal will not be achieved.

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[3] 47 U.S.C. § 251(c)(2); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 181-185 (1996)("*Interconnection Order*"), *recon.*, 11 FCC Rcd 13042 (1996)("*Interconnection Reconsideration Order*"), *petition for review pending and partial stay granted, sub nom. Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996)("*Interconnection Stay*"), *partial stay lifted in part, Iowa Utilities Board et al. v FCC*, No. 96-3321 and consolidated cases (8th Cir., Nov. 1, 1996).

[4] 47 U.S.C. § 251(c)(3); *See Interconnection Order* ¶ 249-270.

[5] 47 U.S.C. § 251(c)(3); *See Interconnection Order* ¶ 289-297, 328-341.

[6] 47 U.S.C. § 251(c)(4); *See Interconnection Order* ¶ 865-877.

Of particular importance to CompTel and its members is that local service facilities be made available in a platform configuration. The ability to obtain and combine unbundled network elements will enable competing carriers to function as LECs in all respects by configuring their own retail products, managing their networks, and providing a full range of retail and carrier services (including originating and terminating access services). This form of entry will be particularly critical to the development of competition outside the urban business center, where construction of duplicative network facilities may be practically and economically infeasible. For most CompTel members, the viability of their local exchange products will depend upon whether a true local service platform is available for their use.

Understandably, incumbent local exchange carriers, and the Bell Operating Companies ("BOCs") in particular, would not voluntarily relinquish their market power. That is why Section 271 conditions something the BOCs have lobbied for since day one -- interLATA market entry -- upon actions they would otherwise have an interest in blocking. Thus, Congress used the classic "carrot and stick" approach to promote the development of competition in the local exchange and exchange access markets. While the obligations of Section 251 are mandatory, and will be enforced if necessary, Section 271 establishes interLATA entry as the incentive to encourage the BOCs along the path Congress has chosen.

It is critical, therefore, that the Commission adhere to the chronology established in Section 271. The BOC *first* must open its network to competitors and create a meaningful opportunity for competition to develop. Then, and only then, may the Commission authorize the BOC to enter the interLATA market in its own region. The Commission must stand firm

in requiring demonstrable and clear evidence, validated by actual experiences, that the statutory prerequisites are fulfilled *before* it will allow the BOC to provide in-region interLATA services. The reward of interLATA authorization cannot and should not be given absent effective local exchange and exchange access competition.

SBC's application fails to meet the rigorous standards of Section 271. First, SBC fails the actual competition test of Section 271(c)(1). The "tangible affirmation" of competition required by Section 271(c)(1)(A) is absent as *not even one single residential customer* is receiving local exchange service from a provider other than SBC.[7] Second, SBC has not "fully implemented" the checklist because most checklist items are not actually being provided to CLECs operating in Oklahoma. Third, SBC is offering interconnection and access at *negotiated* rates which it admits are not based solely on TELRIC principles and which have not been reviewed for compliance with the Act's pricing standards. Fourth, SBC is not offering unbundled switching or local transport -- two elements essential to creating a local exchange platform -- and does not have commercially available OSS access at this time. Finally, the insignificant benefits SBC might add to the already competitive interLATA market are outweighed by the substantial detriment to local competition that would result from removing at this time SBC's only incentive to cooperate in the interconnection and unbundling process. For these reasons, as explained below, the Commission should deny SBC's application.

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[7] SBC is precluded from applying pursuant to Section 271(c)(1)(B) because it has received at least 16 interconnection requests in Oklahoma.

II. SBC'S APPLICATION MUST BE DISMISSED BECAUSE IT FAILS TO MEET THE REQUIREMENTS OF SECTION 271(c)(1)

As CompTel noted in comments filed earlier in this docket,[8] SBC's application does not satisfy either Track A or Track B of Section 271(c)(1). This is a fundamental defect in SBC's application which requires dismissal, regardless of whether SBC has satisfied the remainder of Section 271's prerequisites.

A. SBC Has Failed to Establish a Prima Facie Case of Compliance with Track A

Section 271(c)(1)(A) ("Track A") requires, *inter alia*, that a facilities based competitor be providing local exchange service to both residential and business subscribers in the state for which a BOC seeks interLATA authority.[9] SBC claims to meet this requirement through Brooks Fiber Properties, Inc. ("Brooks"), which it asserts is providing competitive service in Oklahoma to both residential and business subscribers.[10] SBC has its facts wrong.

Brooks "is not now offering residential service in Oklahoma, nor has it ever offered residential service in Oklahoma."[11] Brooks' only activity is a limited test of its ability to

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[8] Comments of the Competitive Telecommunications Association in Support of ALTS's Motion to Dismiss, CC Docket No. 97-121 (filed April 28, 1997).

[9] 47 U.S.C. § 271(c)(1)(A).

[10] Brief In Support of Application by SBC Communications, Inc. *et al.*, at 9 *(SBC Brief)*.

[11] Affidavit of John C. Shapleigh, ¶ 3, attached as Exhibit A to ALTS's Motion to Dismiss (filed April 22, 1997).

provide residential service and is confined to four Brooks employees.[12] Brooks has not made a general offer of residential service to actual subscribers in Oklahoma. Indeed, it does not even appear that Brooks' four "customer" test is a telecommunications service at all, because it is neither available to the public nor offered for a fee.[13] Put simply, no residential customer in Oklahoma can obtain local exchange service from a provider other than SBC at this time. Accordingly, SBC has failed to establish a *prima facie* case of compliance with Section 271(c)(1)(A).

Importantly, in the context of this application, the Commission need not address two issues SBC raises in its brief. First, although Section 271(c)(1)(A) requires "tangible affirmation" that local service competition is a reality, SBC contends that the actual competition standard does not require any minimum level of competition, only that at least one customer is served.[14] It is not necessary to decide this issue now, however, because the facts demonstrate that no residential customer is receiving service from a competitor. Accordingly, regardless of what level of competition is required by the statute, SBC's application is deficient.

Second, the Commission also need not address SBC's claim that a CLEC's use of "dedicated facilities" obtained from SBC, such as leased elements, qualifies as use by a CLEC of its "own" facilities.[15] In the current environment where SBC is not offering

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[12] *Id.*

[13] See 47 U.S.C. § 153(46) (definition of "telecommunications service").

[14] SBC Brief at 9.

[15] *Id.* at 12.

unbundled elements that comply with the Act,[16] it is absurd even to consider SBC's claim at this time. Unless and until SBC actually provides unbundled network elements satisfying the FCC's standards, it is premature to ask the question of whether those elements give a carrier the relevant indicia of ownership to be counted as the carrier's "own" facilities for Track A purposes.

B. Track B is not Available in Oklahoma

Because SBC has not established a *prima facie* case supporting its Track A claims, it is necessary also to address SBC's alternative claim that it may proceed under Section 271(c)(1)(B) ("Track B"). SBC contends that, if Brooks does not meet the actual competition standards of Track A then SBC's Statement of Generally Available Terms and Conditions ("SGAT") may be relied upon in support of its application.[17] However, the statute expressly limits Track B only to situations where no competing provider has requested access and interconnection from the BOC. Because SBC itself claims to have negotiated 16 interconnection agreements, the factual predicate for Track B -- lack of an interconnection request -- is missing. Accordingly, SBC's reliance upon Track B is misplaced, and the Commission should dismiss the application.

It is clear from Section 271(c)(1) that a BOC must proceed under Track A, except in the narrow circumstances specified in Track B.[18] Track A is the preferred approach

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[16] See pp. 17-25, *infra*.

[17] *Id.* at 14-15.

[18] The two tracks are mutually exclusive. Congress' use of the disjunctive "or" in Section 271(c)(1) demonstrates that a BOC may proceed *either* under subsection A (Track A) or subsection B (Track B), but not both. Moreover, because Track B is limited solely to situations where no request is filed and Track A requires an agreement (which presumes the

because it provides the "tangible affirmation" that access and interconnection are producing actual competition to actual subscribers. Track B exists only as a protection against CLECs gaming the negotiation process in an effort to deny BOCs interLATA authority. Therefore, except for two post-request exceptions not applicable here, Track B is available only when "no [competing] provider has requested the access and interconnection described in subparagraph A [Track A]."[19] *If* no competing provider has requested interconnection, a BOC may file a Statement supporting its application for interLATA authority. In all other circumstances, the BOC must satisfy the actual competition standard of Track A.

In Oklahoma, SBC reports sixteen negotiated interconnection agreements.[20] Each agreement necessarily began with a "request for interconnection and access" to SBC's facilities. Indeed, SBC acknowledges that Brooks has submitted such a request.[21] As a result, SBC has received at least 16 requests for access and interconnection pursuant to the Act.[22] Therefore, Track B, by its terms, cannot apply in this situation.

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pre-existence of an interconnection request), the two sections are written such that when Track B applies (when no interconnection request exists) Track A cannot apply. Thus, SBC cannot proceed under both Track A and Track B simultaneously.

[19] 47 U.S.C. § 271(c)(1)(B).

[20] SBC Brief at 4-5 & n. 6. SBC also has engaged in arbitration under the Act with AT&T in Oklahoma. *Id.* at 5.

[21] *Id.* at 6 (noting that SBC is providing Brooks "interconnection and access to SWBT's network" pursuant to an agreement).

[22] Because Brooks has requested interconnection and it clearly intends to utilize at least some of its own facilities, these facts do not present the question of whether some types of requests might not disable Track B. It also is not necessary to answer this question in order to prevent abuse of the request process. The possibility that providers might submit less than bona fide requests was considered by Congress and dealt with in the statute. If a provider submits a "request" (thereby disabling Track B), but either fails to negotiate in good faith or

SBC appears to interpret an interconnection request to be a springing event which does not occur until the requestor also satisfies the actual competition standard of Section 271(c)(1)(A). For example, it claims that Track B is applicable if Brooks does not "qualify" as a facilities based provider or if it had not "qualified" as such prior to the three-month "window" referred to in Track B.[23] This claim confuses *who* submits a request with *whether* an interconnection request is submitted, and would render all "requests" invalid unless and until the carrier begins providing actual services. There is no support for such an absurd interpretation in the statute. An interconnection *request*, not an agreement (or its implementation), disables Track B. Indeed, if the existence of a "request" depended upon the actual provision of service, a BOC would have an incentive to delay or obstruct actual service in order to maintain its ability to obtain interLATA authority by merely "offering" terms of its own choosing under Track B. This clearly was not Congress' intent in establishing the two Tracks of Section 271(c)(1).

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delays the implementation of an agreement, a BOC can revive Track B. *See* 47 U.S.C. § 271(c)(1)(B).

[23] SBC Brief at 14-15.

III. THE APPLICATION MUST BE DENIED BECAUSE THE MERE "OFFERING" OF INTERCONNECTION IS NOT SUFFICIENT TO SATISFY THE CHECKLIST AND BECAUSE SBC'S RATES HAVE NOT BEEN FOUND TO SATISFY THE ACT'S REQUIREMENTS

A. SBC is not Actually Providing Some Checklist Items

In its Brief, SBC asserts that it satisfies Section 271(c)(2) if it merely "makes available" the checklist items, regardless of whether they are taken.[24] However, the mere "offering" of checklist items is not sufficient to demonstrate SBC's compliance.

Section 271(d)(3) requires as a condition for approval of SBC's application that the Commission find SBC has "fully implemented" the competitive checklist of Section 271(c)(2).[25] In turn, Section 271(c)(2)(A) expressly states that a BOC may satisfy the checklist through an approved interconnection agreement only if "such company is providing access and interconnection" under the agreement and such access meets the substantive standards of subparagraph (B) [the competitive checklist].[26] Access or interconnection meets the substantive standards of the competitive checklist if it "includes *each* of [the enumerated standards]."[27] The Conference Committee left no doubt as to its intention in using this language: "The requirement that the BOC is 'providing access and interconnection' means that the competitor has implemented the interconnection request and

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[24] SBC Brief at 16.

[25] 47 U.S.C. § 271(d)(3)(A)(i).

[26] 47 U.S.C. § 271(c)(2)(A)(i)(I) (emphasis added).

[27] *Id.* § 271(c)(2)(B) (emphasis added).

the competitor is operational."[28] These provisions can be satisfied only if SBC is actually providing each of the checklist items pursuant to an approved interconnection agreement.[29]

This point is critical to evaluation of SBC's application, for SBC is actually providing interconnection only to Brooks Fiber, and even then is not providing every checklist item pursuant to the Brooks agreement. For example, Brooks is not even receiving unbundled local loops at this time, due to difficulties in obtaining collocation arrangements with SBC in Oklahoma.[30] Neither Brooks nor any other entity are receiving unbundled switching, unbundled transport, or other network elements defined by the Commission and critical to the competitive provision of local exchange and exchange access service. Unless and until SBC is actually providing the checklist items in a commercial setting, SBC has not "fully implemented" the competitive checklist.

By requiring that a BOC actually "provide" each checklist item through an agreement, Congress intended that at least one competitor actually be using the item to serve customers. Operational implementation of the access and interconnection SBC offers is an important assurance that local competition is possible. Actual practice will expose limitations and omissions in the network element in a way that mere "availability" cannot. Actual practice will determine whether a checklist item is commercially feasible (*i.e.*, whether the item actually can be provided on a timely, reliable basis) or whether the promise is illusory.

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[28] H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 145 (1996).

[29] Because Track B is not available, SBC cannot rely upon its SGAT to demonstrate checklist compliance.

[30] Brooks OCC Comments at 3-4 (Mar. 11, 1997).

SBC's "available to order" standard, on the other hand, leaves it and the Commission guessing as to why an element is not being used by competitors. Not only may it be difficult to discern why an entity is not using something, but the inherent ambiguity in such an analysis presents substantial opportunities for a BOC to subvert the Act's unbundling standards. CompTel members and other prospective local service competitors expended considerable time and resources to make sure the Act's resale and unbundling standards are reflected in the Commission's rules and in individual interconnection agreements. The Commission now must ensure that actual practice validates the BOCs' fulfillment of those standards. True unbundling should not be subverted by allowing the BOC to take credit for "offering" sub-par access or interconnection arrangements.

Furthermore, SBC's interpretation of the word "provide" to mean "offer" contradicts the plain meaning and logical structure of Section 271(c)(2).[31] Mirroring the two tracks of Section 271(c)(1), Section 271(c)(2) sets forth two alternative means of demonstrating compliance. A BOC may show that it "is providing access and interconnection" pursuant to an agreement, *or* it may show (if Track B is available) that it "is generally offering access and interconnection" pursuant to a Statement.[32] If the term "provide" were synonymous with "offer," however, the distinction between the two alternatives of Section 271(c)(2) (and between Track A and Track B) disappears. Because Congress distinguished between providing access pursuant to an agreement and offering access pursuant to a Statement, SBC

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[31] *See* SBC Brief at 16 (arguing that "provide" means to "make available").

[32] 47 U.S.C. § 271(c)(2)(A)(i).

must show that it is actually furnishing each of the checklist items to Brooks or another carrier with whom it has an approved interconnection agreement.

B. The FCC cannot find that SBC's Prices Meet Sections 251(c)(3) and 252(d)(1)

SBC's claims regarding the rates at which it is offering interconnection and unbundled elements are curious. It admits that it currently is offering these items only through agreements reached through voluntary negotiations.[33] Such agreements are not required to comply with the pricing standards of Section 251, and thus may adopt pricing that is not cost-based.[34] As a result, the issue of whether SBC is offering rates that met the Act's standards was irrelevant to the OCC's analysis of these agreements, and its approval does not constitute a finding of compliance with the Act's pricing standards. Accordingly, the Commission does not have before it rates which have been found to comply with Section 251(c)(3) or 252(d)(1).

Nevertheless, SBC claims that "generally" the rates it offers in these agreements "were derived based on a forward-looking cost study, *or by adopting tariffed or contractual rates that are themselves cost-based.*"[35] To SBC, this means that it used its own cost studies, which have not been reviewed by the OCC, *unless* (1) SBC had not conducted a study (in which case it used its existing tariffed rates), *or* (2) SBC was offering a "similar" service to an independent LEC (in which case it used the contract rate between the LECs), *or* (3) SBC concluded that a "comparable" feature already was being offered (in which case it

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[33] SBC Brief at 4.

[34] *See* 47 U.S.C. § 252(a)(1).

[35] SBC Brief at 22 (emphasis added).

disregarded its cost study and priced the feature at its existing rate).[36] Thus, SBC has openly and freely disregarded TELRIC in the prices it currently offers for access and interconnection under the Act. That is permissible for negotiated agreements, but such pricing clearly does not meet the standards of Section 251(c)(3) or 252(d)(1), which require cost-based rates for all elements.

Even if the Commission were to look beyond the negotiated agreements to the OCC's arbitration decisions, the Commission could not make the required finding of compliance with the Act's price standards. In the AT&T arbitration, the OCC explicitly did *not* establish prices found to comply with Section 252(d)(1).[37] Rather, until SBC submits appropriate cost studies (and until the final decision in the 8th Circuit appeal is rendered), the arbitration order establishes *interim* rates, which are subject to change pending final review of the cost studies. Therefore, at this time, the Commission cannot determine whether SBC's cost studies satisfy the Act's requirements.

In sum, SBC is unable to demonstrate that its rates for interconnection and unbundled network elements comply with the pricing standards of the Act. *See* 47 U.S.C. § 271(c)(2)(B)(i)-(ii) (requiring SBC to provide interconnection and unbundled elements "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)"). The Commission therefore cannot approve SBC's application at this time.

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[36] Kaeshoefer Aff. ¶ 19.

[37] Report and Recommendations of the Arbitrator at 19 (Cause No. PUD 960000218 Okl. Corp. Comm. Nov. 13, 1996).

IV. IN ANY EVENT, SBC DOES NOT SATISFY THE CHECKLIST

SBC's failure to meet the actual competition test of Section 271(c)(1), its failure to provide each of the items on the checklist, and the lack of cost-based rates for access and interconnection require that SBC's application be denied, so the Commission need not address whether SBC's offerings meet the substantive standards of the checklist. However, it is clear that SBC fails this test also.

A. SBC has Not Shown that the Local Switching and Unbundled Transport Elements it Offers Meet the Act and the Commission's Rules

Two elements central to the availability of unbundled network elements in a platform configuration are unbundled switching and unbundled transport. For many new entrants, such as many CompTel members, it may not be economic to purchase a switch and other facilities for each of the markets they intend to serve. As a result, they will need to obtain unbundled switching and transport capabilities from the ILEC, and to combine these elements with other elements they obtain in order to create a competitive local service product. SBC has not demonstrated that it will provide switching and transport that satisfy the Act's unbundling requirements.

The importance of unbundled local switching is underscored by the fact that it is listed twice in the checklist. It is a "network element" which must be provided in accordance with Section 251(c) and it is a separate checklist item which is required to be offered "unbundled from transport, local loop transmission or other services."[38] Particularly for smaller carriers, but even for larger carriers with a geographically dispersed customer base,

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[38] 47 U.S.C. §§ 271(c)(2)(B)(ii) and (vi).

unbundled local switching (ULS) may be the only means through which they can provide service in some or all local service markets. Thus, availability of unbundled switching is critical to the development of competitive alternatives for end users.

Unbundled switching under the Act gives a carrier access to the entire switching capability provided by the LEC's switch. It "encompass[es] line-side and trunk-side facilities plus the features, functions, and capabilities of the switch."[39] It also includes all vertical features, Centrex functions, and all "customized routing" functions available through the switch.[40] A carrier that purchases the element replaces SBC as the subscriber's local telephone carrier and is responsible for providing all switching functions associated with exchange, exchange access and other services. As the FCC explained:

> [A] carrier that purchases the unbundled local switching element to serve an end user effectively obtains *the exclusive right* to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user.[41]

Therefore, the FCC emphasized, a carrier purchasing unbundled switching must provide all switching services within the capabilities of that switch.[42]

To effectively use the switching element, a carrier also will have to obtain access to SBC's existing interoffice transport network to receive and complete local calls routed through the switch. In most cases, a carrier will want to obtain access to the facilities SBC

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[39] *Interconnection Order* at ¶ 412.

[40] *Id.*

[41] *Interconnection Reconsideration Order*, 11 FCC Rcd at 13048 (emphasis added).

[42] *Id.* A carrier may not, for example, purchase switching solely to offer exchange access services reaching the customer.

currently uses to route its own local exchange traffic crossing through the switch, for these facilities will provide the most efficient and most cost-effective transport method for carrying such calls. Thus, the Commission's rules require ILECs to offer both dedicated transport on an unbundled basis and to offer common transport using its existing facilities.[43] As the Commission summarized in its *Interconnection Order*, ILECs must "provide access to shared interoffice facilities *and* dedicated interoffice facilities between the above-identified points in incumbent LECs' networks, including facilities between incumbent LECs' end offices, new entrant's switching offices and LEC switching offices, and [digital cross-connect systems]."[44] Common end office transport involves transport "between incumbent LECs' end offices" using facilities used by the incumbent LEC to provide a telecommunications service. SBC's supporting materials, including the affidavits of SBC witnesses Kaeshoefer and Deere, do not demonstrate that SBC will be providing unbundled switching and common transport in compliance with these requirements.

1. SBC Must Not Interfere with the Right or Ability of Purchasers of the Unbundled Switching Element to Provide Access Services

Purchasers of local switching must also be able to provide exchange access services using the unbundled switching element. However, SBC's brief and supporting materials do not address this issue. For example, Mr. Kaeshoefer's affidavit describes SBC's local switching element, but is silent on whether SBC intends to levy access charges to lines served by another carrier through the unbundled switching element. The Commission must

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[43] 47 C.F.R. § 51.319(d).

[44] *Interconnection Order* ¶ 447 (emphasis added).

receive a clear answer to this question, for the Act and the Commission's rules preclude such a practice.

An entity purchasing unbundled switching obtains *all* of the features, functions and capabilities of the switch. As the Commission made clear, this entity obtains the *exclusive right* to provide switching to the subscriber. That right includes the right to provide both originating and terminating access to the customer. Therefore, SBC should clarify that it will not attempt to withhold the right to bill access from a purchaser of its ULS element and that it will not itself levy access charges on lines served through the unbundled local switching element or on calls completed to those lines.

Moreover, SBC's affidavits do not indicate whether it will provide the data and recording capabilities necessary for carriers purchasing the switching element to render their own access bills. Without knowing whether SBC will provide this information, and how it intends to do so, it is impossible to evaluate whether SBC's ULS element satisfies the Act.

2. SBC Must Permit Access to All of the Features and Capabilities of the Local Switch Without Interference

SBC does not state the extent to which (if at all) customized routing features will be made available to purchasers of unbundled switching and local transport. Customized routing is essential to the development of competition in the local exchange as Congress envisioned it. Such routing capability enables carriers purchasing unbundled local switching to purchase (or self-provision) interoffice transport from another carrier or to route traffic to the most efficient trunk group for completion. Customized routing also enables requesting carriers to provide operator services or directory assistance through sources other than the ILEC, for

example. Although SBC asserts that purchasers of unbundled switching will have access to the same features made available to end users and "all vertical features the switch is capable of providing,"[45] it does *not* state that purchasers will be able to access these features if they are supplied by a provider other than SBC. Without the ability to perform customized routing, carriers will not be able to combine unbundled switching with the operator services of other suppliers, for example.

The record demonstrates that SBC has attempted to deny access to some features of the switch. For example, SBC does not offer local switching with DS1 trunk port connections, which are necessary to use the customized routing features of the switch. As described by AT&T witnesses Falcone and Turner, SBC has not included prices for DS1 trunk ports in its interconnection agreements and has ignored AT&T's requests for DS1 prices.[46] Without DS1 trunk port pricing, carriers cannot utilize all of the capabilities and features of unbundled switching.

In addition, SBC is denying equivalent access to these functions by insisting that all purchases of unbundled elements be treated as special circuits for testing and maintenance purposes, even when no physical change is made and these functions could continue to be performed in the same manner that SBC provides them to itself. As described in the affidavit of AT&T witnesses Falcone and Turner, SBC insists on treating unbundled element purchases as special designated circuits, even if a CLEC purchases all of the network

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[45] SBC Brief at 31; Kaeshoefer Aff. ¶ 48.

[46] Falcone/Turner Aff. at ¶¶ 60-61. Moreover, although Track B is not applicable here, it is noteworthy that SBC does not list DS1 trunk ports in its SGAT either. *See* SGAT, Appendix Pricing Schedule at 2.

elements used for the same service from SBC.[47] As a result, SBC will move maintenance and testing functions from its own, automated system to a separate, manual system and will require a customer to be out of service while a new test point is installed on the circuit.[48] These changes are wholly unjustified when a CLEC purchases all of the elements -- a loop, switching, transport, etc. -- from SBC. All that is needed is a change in SBC's billing systems, not a physical or software change in the network.[49]

3. SBC Must Permit Nondiscriminatory Access to its Interoffice Network, Including Common Transport Using the Same Facilities SBC Uses for its Own Local Traffic

SBC asserts that it will make both dedicated and common transport available and will do so "in exactly the same manner that SWBT provides such transport to itself and others."[50] CompTel assumes that by using the term "common transport" and by committing to providing such transport in "exactly the same manner" it is provided to SWBT, that SBC will offer transport over its interoffice network, using the existing routing instructions it uses to route its own local exchange traffic. The Commission should require SBC to clarify that it will offer transport in this manner before it assesses SBC's compliance with the checklist's unbundled transport requirement.

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[47] Falcone/Turner Aff. ¶ 29.

[48] *Id.* ¶ 31.

[49] *Id.* ¶ 28.

[50] SBC Brief at 31; Kaeshoefer Aff. ¶¶ 43-45.